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RENEWED PETITION UNDER 37 CFR § 1.47(a)

Applicants: W.J.W. van Venrooij, et al.

Serial No. 09/308,150

Filed May 13, 1999

For PEPTIDE DERIVED FROM AN ANTIGEN RECOGNIZED.....

CONTENTS All by U.S. Express Mail Label No. EV342337429US:

- 1) Petition for Extension of Time with \$740 fee check; and
- 2) Renewed Petition under 37 CFR § 1.47(a) with \$130 fee check.

Attorney Stephen A. Slusher

Reg. No. 43,924

Date March 24, 2004

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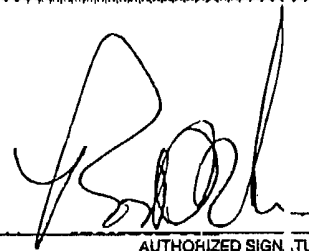
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Annette M. Turk, Paralegal

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Waltherus J.W. van Venrooij, et al.

Group Art Unit 1644

Serial No. 09/308,150

Filed: May 13, 1999

Examiner: F. VanderVegt

For: PEPTIDE DERIVED FROM AN ANTIGEN
RECOGNIZED BY AUTOANTIBODIES FROM PATIENTS WITH
RHEUMATOID ARTHRITIS, ANTIBODY DIRECTED AGAINST
SAID PEPTIDE, A COMBINATORIAL ANTIGEN, AND A METHOD
OF DETECTING AUTO-IMMUNE ANTIBODIES

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PETITION FOR EXTENSION OF TIME

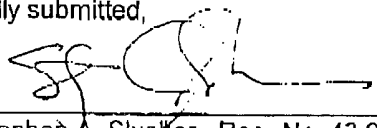
Dear Sir:

Pursuant to Public Law 97-247, Section 8, and 37 C.F.R. § 1.136, Applicants herewith petition that the period for response to the Petition Decision mailed on September 24, 2003, be extended for four month(s), to and including March 24, 2004. The appropriate small entity fee for this extension accompanies this Petition. Small entity status is declared under 37 CFR § 1.27.

For the Commissioner's convenience this Petition is submitted in duplicate. If any additional fee is required, please charge our Deposit Account No. 13-4213.

Respectfully submitted,

By:

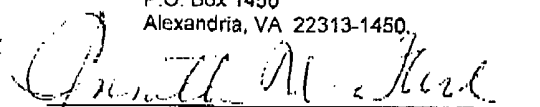

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PATENT APPLICATION

I hereby certify that this transmittal and the documents referred to as enclosed therein are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 via Label No. EV342337429US, on March 24, 2004, addressed to:
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Annette M. Turk, Paralegal

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Waltherus J.W. van Venrooij, et al.

Serial No. 09/308,150

Filed: May 13, 1999

Group Art Unit 1644

Examiner: F. VanderVegt

For: PEPTIDE DERIVED FROM AN ANTIGEN
RECOGNIZED BY AUTOANTIBODIES FROM PATIENTS WITH
RHEUMATOID ARTHRITIS, ANTIBODY DIRECTED AGAINST
SAID PEPTIDE, A COMBINATORIAL ANTIGEN, AND A METHOD
OF DETECTING AUTO-IMMUNE ANTIBODIES

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Dear Sir:

RENEWED PETITION UNDER 37 C.F.R. § 1.47 (a)

This Renewed Petition is submitted in response to the Office's Petition Decision mailed on September 24, 2003. Accompanying this Petition is the required petition for extension of time and extension fees. Authorization is provided in this Petition to charge any additional fees to Deposit Account No. 13-4213.

The subject national entry application was filed by express mail on May 13, 1999, listing Waltherus Jacobus Wilhelmus Van Venrooij, Gerardus Antonius Schellekens, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet as co-inventors, and claimed priority to International Application Serial

No. PCT/NL97/00624 filed on November 14, 1997. At the time of the U.S. national entry application, none of the signatures had been obtained. Inventor Gerardus Antonius Schellekens has refused to join in the application. Thus, Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet respectfully petition the Office to accept the filing of this application on their own, and in behalf of Gerardus Antonius Schellekens.

In accordance with 37 C.F.R. § 1.497(a) and M.P.E.P. 1002.02(b) and M.P.E.P. 401.03, the undersigned states the following:

(1) A Declaration under 37 C.F.R. § 1.63 on their own behalf, and under 37 C.F.R. § 1.64 on Gerardus Antonius Schellekens' (hereafter "Dr. Schellekens") behalf, was signed by the Rules 47(a) applicants, Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet and was filed on September 30, 1999;

(2) An initial Petition Under 37 C.F.R. § 1.47(a), asserting that Dr. Schellekens refused to join in the application, was filed on September 30, 1999. On November 3, 1999, the Office mailed a Notification of Acceptance (Form PCT/DO/EO/903), indicating that the application had 35 U.S.C. §§ 102(e) and 371 dates of September 30, 1999. Thereafter, no further action was taken on the initial Petition until issuance of a Decision on Petition Under 37 C.F.R. § 1.47(a) dated April 18, 2003, which held that "proof ... that the inventor refuses to sign or cannot be reached after diligent effort" had not been established. As appears from the Decision, Dr. Schellekens had corresponded with the Office, and had used in such correspondence a different address than that appearing in the initial Petition. Accordingly, the initial Petition was dismissed and the Notice of Acceptance vacated, with leave to file for reconsideration.

(3) A "Petition Decision Response and Renewed Petition" was filed on June 17, 2003, and a "Supplemental Petition Decision Response" was filed on July 15, 2003. As recited therein, as a result of a judicial proceeding in The Netherlands, a declaration signed by Dr. Schellekens was submitted.

(4) By "Decision on Petition Under 37 C.F.R. § 1.47(a)" dated September 24, 2003, the initial Petition was "dismissed as moot", but the declaration submitted on July 25, 2003 was rejected because the "18 U.S.C. 1001 statement is partially obscured and the declaration contains untranslated notations." Petitioners were given two months within which to file the proper response, with extensions of time available under 37 CFR 1.136(a).

(5) Petitioners attempted to contact Dr. Schellekens on numerous occasions to resolve issues between the parties. On information and belief, legal proceedings in The Netherlands are pending relating to ownership of the invention. This effort culminated with a letter being sent to Dr. Schellekens by both registered mail and courier delivery on March 9, 2004, a copy of which letter is attached as Exhibit A hereto. This letter recites, *inter alia*, the efforts by counsel for the assignee, Stichting voor de Technische Wetenschappen, to resolve issues and obtain Dr. Schellekens' signature on a valid declaration.

(6) By declaration dated March 10, 2004, attached as Exhibit B hereto, Dr. Schellekens responded to the letter of March 9, 2004. It is not known whether Dr. Schellekens submitted the declaration directly to the Office, or whether it has been matched to the file, but the declaration is addressed to the "commissioner of Patents and Trademarks." In his declaration, Dr. Schellekens recites that he is "an inventor of the invention described in the above captioned U.S. patent application 09/308,150." However, based on Dr. Schellekens belief as to the facts, Dr. Schellekens states that he "will not at this moment sign any document concerning U.S. patent application 09/308,150." While Dr. Schellekens claims that he was mislead (see the unnumbered second through seventh paragraphs), the third from the last paragraph sets out his true reason in refusing to sign the declaration, namely that he is disputing ownership of the patent application.

(7) Petitioners vigorously dispute the factual allegations by Dr. Schellekens in the unnumbered second through seventh paragraphs of Exhibit B. See, e.g., the declaration of co-inventor Waltherus Jacobus Wilhelmus Van Venrooij, which states that there was a "disturbed working relationship" with Dr. Schellekens, that he personally telephoned Dr. Schellekens on June 10, 1999 and

asked him to sign the declaration, that he had a letter containing the declaration hand delivered to Dr. Schellekens on June 11, 1999, and that the "documents were returned unsigned by mail together with a letter indicating an absolute refusal to sign." (Declaration of Van Venrooij, filed September 30, 1999) However, it is not necessary to a decision on this Renewed Petition to resolve these issues; the declaration of Dr. Schellekens (Exhibit B) clearly establishes the legally pertinent fact, which is that Dr. Schellekens refuses to sign the declaration. Further, Dr. Schellekens' own declaration further establishes the true reason for his refusal, a dispute as to ownership of the patent application.

(8) Petitioners further understand that Dr. Schellekens has contacted both Examiner Francois Pierre VenderVegt in Group Art Unit 1644 of the U.S. Patent and Trademark Office, who is presently the assigned examiner on the application, and the PCT Legal Administration Attorney Advisor, Erin M. Pender, who issued the original Decisions on Petition, indicating his refusal to execute the application papers. The correspondence of record in the Patent Office files and communications by Dr. Schellekens clearly show his intentions.

(9) The initial Petition Under 37 C.F.R. § 1.47(a), asserting that Dr. Schellekens refused to join in the application and filed on September 30, 1999, together with all declarations and papers submitted therewith, are incorporated here by reference. It is specifically noted that the Decision on Petition Under 37 C.F.R. § 1.47(a) dated April 18, 2003 established that all statutory requirements had been met, other than proof of the inventor's refusal to sign.

(9) The last known address of co-inventor Gerardus Antonius Schellekens is:

Gerardus Antonius Schellekens
Tondeldoos 36
5231 WB Den Bosch, The Netherlands.

Action Requested

In view of co-inventor Dr. Schellekens' refusal to execute the declaration required in order to respond to the Office's Notification mailed July 6, 1999 and the Decision on Petition Under 37 C.F.R.

§ 1.47(a) dated September 24, 2003, and as necessary to complete the subject application Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet request that the Declaration under 37 C.F.R. § 1.63 and § 1.64 be accepted and that the subject application be considered complete as to its filing. Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet believe that they are entitled to make such application on behalf of co-inventor Schellekens.

The declaration as to inventorship that Dr. Schellekens signed was, unfortunately, a second or third generation photocopy and was apparently copied with tabs marking the place for signature and with notations to the effect of "sign here" written in Dutch. Those tabs also covered part of the required text of the form of declaration and thus the previously signed document is not sufficient to meet the requirements for an inventor declaration. Dr. Schellekens has subsequently continued to refuse to sign a declaration as to inventorship, as shown by his own declaration attached hereto as Exhibit B.

Therefore, it is requested that this Petition be granted and that the application be provided 37 C.F.R. § 1.495 status.

Fee

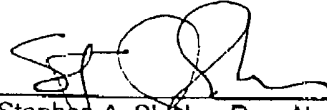
Provided with the Petition is a check for \$130 in payment of the filing fee as required under 37 C.F.R. § 1.17(i). Because this is a renewed petition, it is respectfully requested that the fee be waived. A Petition for Extension of Time is attached with the required fee of \$740. Authorization is given to charge payment of any additional fees, or credit any overpayment to Deposit Account 13-4213.

Grant of the Renewed Petition is respectfully requested.

Respectfully submitted,

Dated: March 24, 2004

By



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